Clinical Course – I
(TA2E)

Professional Ethics, and Professional Accounting System

Assessment Scheme

i. Project on Professional Ethics (Written Submission)	:	25 Marks
ii. Case Study (BCI, High Court and SC Judgements)	:	25 Marks
iii. Tests (Internal)	:	25 Marks
iv. Viva Voice on Project and Case Study	:	25 Marks
Total	:	100 Marks

Unit - I Professional Ethics:

Professional Ethics - meaning and nature - Professional misconduct - meaning and ambit - Organisation, powers and jurisdiction of State Bar Councils and Bar Council of India - Disciplinary Committee of state Bar Councils and Bar Council of India - Organisation, procedure and powers - Remedies against order of punishment.

Unit - II Bar Bench Relations:

Contempt of Courts Act - Contempt of Court - Meaning and Nature - Categories of contempt of Court - Contempt Jurisdiction of the Subordinate Courts, High Courts and Supreme Court - Procedure -Punishment for contempt of Court - Remedies against Punishment.

Accountancy For Lawyers:

Accountancy for lawyers - Purpose of keeping accounts - Important aspects relating to accountancy - Legal requirements for maintaining books of accounts - Accounts of Professionals.

Statutory Materials with Amendments

1. Advocate Act,1961

2. Contempt of Courts Act, 1971

3. The Bar Council Code of Ethics.

4. Bar Council of India Rules 1975.

Books for Reference:

1. K. V. Krishnaswami Aiyar - “Professional conduct and Advocacy”.

2. Dr. Kailash Rai - Legal Ethics, Accountancy for Lawyers and Bar Bench Relations.

3. Nabhi’s Publications - Business and Professional Accounts.

4. Prof. B.N.B. Aliga - Traditions of the Bar - A. I. R. 1991 Journal 161

5. Mr. Justice M. M. Ismail - Professional Ethics and Etiquette Madras High Court Centenary Celebration

6. Professional Ethics, M.C. Setalvad

7. Judicial Accountability, K.K. Venugopal

8. Professional Conduct, Taikad SubramaniIyer.

9. The Lawyer’s Strike and The Duty of The Supreme Court, H.M. Seervai.

10. Role of Bar, H.R. Khanna.

11. The Indian Bar, P.P. Rao.

12. The American Bar Association Organization and Activities.

13. Bench-Bar Relations-Crisis of Credibility, P.P. Rao.

14. Temper on The Bench, C.P. Singh.

Selected opinions of the disciplinary Committee of the Bar Council of India on Professional Misconduct:

1. Jagadish Singh and others v. T. C. Sharma.

Fact:

Jagadish Singh and others were employees of the Central Board of Education, New Delhi. They were arbitrarily dismissed from service by the Board. They approached T.C. Sharma an Advocate to file a case against the arbitrary dismissal. They paid Rs.1400 as fees for the case.

Sharma gave a fake case number starting that he has field the case before the central Administrative Tribunal, New Delhi. On verification it was found that no such case has been field. Later they engaged another Advocate Mr. Bhati to file the case and got a favourable order of reinstatement.

Therefore, they asked the return of Rs.1400 from T.C. Sharma. He refused to pay the same. So, the complainant filed a petition against him before the Delhi Bar Council alleging professional misconduct. Since Sharma failed to appear during the enquiry, the state Bar Council could not able to dispose off the case within one year. Hence, the case was transferred to the Bar Council of India.

The Bar Council of India examined the petitioners, but the respondent was absent.

Decision:

Finally, the Bar council of India passed an order holding the respondent guilty of professional misconduct and awarded the following punishments.

1. Suspended him from practice for a period of 5 years.
2. Directed him to return the Rs.1400/-with 12%interest per annum.
3. Directed to give Rs.500 as cost to the complainant.

2. Babulal v. Subash Jain

Fact of the Case:

The complainant and the Respondent are Advocates. The complainant filed a petition before the Madhya Pradesh Bar Council stating that the respondent to guilty of professional misconduct under s.35. The allegation of the complainant is that the respondent a practicing lawyer, is working as an Editor, Printer and Publisher of a weekly called ``Aaj Ki Janta'' He is the owner of the press which prints the weekly. It is also alleged that the respondent did not disclose these facts while applying for enrolment to the State Bar Council.

The respondent denied all the allegations. He contended that before enrolment, the job of printing and publishing was transferred to his wife and thereafter he was working only as an editor of the said weekly.

Since the enquiry was not completed within one year, the case was transferred to the Bar Council of India.

In the enquiry it was found that he enrolled in 1973 and continued as the printer, publisher and editor of the weekly till 1983. Only in 1983 printing and publishing was transferred in the name of his wife. But, by a general power of attorney from his wife the respondent was looking after the entire work of the weekly.

Decision:

Based on this finding the Bar Council of India held that the respondent is guilty of professional misconduct punishable under S.35 of the Advocates Act and passed the following orders.

1. He was suspended from practice for a period of one year.
2. Suppression of the fact that he is the owner of the weekly in the enrolment application cannot be treated as professional misconduct punishable under S.35.

3. Balswaroop soni v. Babulal soni

Fact of the Case:

BCI DC Appeal No.25/1992

Babulalsoni is the father of Balswaroopsoni. He filed a complaint against his son alleging professional misconduct before the Madhya Pradesh Bar Council. The allegations are as follows:

1. A criminal case under S.307 I.P.C. is pending against him.
2. while appearing as a defence counsel for one munna in a criminal case No.125/89 he has introduced his own brother as Dwarha Pradesh and arranged him to stand as surety for munna.
3. He has withdrawn a sum of Rs.1500 deposited in the court in the name of Babulalsoni in a civil case without his consent.

Before the State Bar Council, Babulalsoni personally appeared and produced certain documentary evidence in support of his case but the present appellant did not appear though many chances are given to him. Finally, the Bar Council held that Balswaroopsoni is guilty of professional misconduct and passed an order removing his name from the Advocates Roll.

Against this order Balswaroopsoni filed an appeal the Bar Council of India. In the appeal he denied all the allegations against him but, failed to produce any documentary evidence in his support.

Regarding the second allegation he took a defence that munna brought one person and introduced him as Dwarakha Prasad. Believing Munna's words only he also introduced him to the court as Dwarakha Prasad. This defence was not accepted by the Bar Council of India because Balswaroopsoni knows that the person brought by Munna Dwarakha Prasad.

Regarding the third allegation he took the defence that he is also one of the plaintiffs in the said case and his father has given power to withdraw that amount of Rs .1500/.

But no documentary evidence in support of this difference was produced by him.

Decision: After hearing the parties, the Bar Council of India reduced the punishment and suspended him from practice for a period of 5 years.

4. Indure Ltd v. Deo Raj Guptha.

BCI TR Case No.58/1993

Fact of the Case:

The complainant company is one of the highest producer of ash handling system in the world, having large manufacturing and engineering factories. The respondent was the Advocate of the company and various cases related to the company was entrusted with him.

In April 1986 NELCO precisions, a company located at Faridabad gave a false advertisement in the papers that Indure Ltd. Is using the parts manufactured by NELCO precisions.

To stop this false advertisement Indure Ltd. instructed the respondent to serve a legal notice to NELCO. Notice was sent, but the notice has not given the desired result. Therefore, the respondent was instructed to file a case against NELCO. A plaint was prepared and it was approved by the petitioner company and necessary court fees was also paid to him.

The respondent informed the complainant that he has filed the suit in the Delhi High Court and got a stay order. In fact no suit had been filed.

The complainant filed a complaint in the Bar Council of U.P. alleging professional misconduct against the respondent. They alleged that the respondent had made a similar type of misrepresentation earlier also when he was instructed to file a case against Anoel Industries Ltd. A criminal complaint was also filed against Gupta in this regard.

The respondent filed a very brief counter and failed to give any explanation about the serious allegation of professional misconduct. He simply prayed that for the same matter there is already a criminal case pending against him, so the Bar Council should not proceed with the complaint. When the petition was pending before the Bar Council, the criminal case was disposed off and he was convicted.

Since the U.P Bar Council could not able to complete the enquiry within one year the petition was transferred to the Bar Council of India.

Decision:

The Bar Council of India examined the complainant and the respondent and finally came to the conclusion that the allegations against the respondent the complainant has been proved beyond reasonable doubt and directed the removal of his name from the roll of Advocates and prohibited him from practicing as an Advocate.

5. Commissioner of Civil Supplies and Consumer Protection Department v. V. Balakrishnan. DC Appeal No.15/1995

Fact of the Case:

Mr. Chandrakanth of Villupuram has filed a writ petition No.10589/90 in the Madras High Court praying for the release of a Van TAH 4777 which was ceased by the Special Tahsildar, Thindivanam on 5- 7-1990. The writ petition was dismissed on 11- 7-1990.The respondent Mr. V. Balakrishnan was the Advocate for Mr. Chandrakanth in the writ petition. After the dismissal of the Writ petition. After the dismissal of the writ petition the respondent sent the following telegram to the District Revenue Officer, South Arcot.

``High Court of Madras in writ petition No.10589/1990 filed by Chandrakanth directed the District Revenue Officer to release the van TAH 4777 with 100 bags of paddy within one week. Do not sell the paddy. Detailed order follows".

In another writ petition No.6184/1990 the respondent sent the following telegram to the Collector, South Arcot.

In writ petition No.6184/1990 filed by cuberan of Villupuram for release of 117 bags of paddy the High Court has ordered notice of motion returnable on 11-6-90. Not to dispose the paddy till the final order in the writ petition'.

A petition was filed against Mr. Balkrishnan before the State Bar Council alleging professional misconduct. It is alleged that the contents of both these telegrams were false and is not in consonance with the High Court order.

The State Bar Council gave benefit of doubt to the respondent by observing that he acted with all enthusiasm to protect the interest of his client. The State Bar Council observed that though his conduct is not praise worthy, it did not amount to professional misconduct and thereby no punishment is awarded to him.

Decision:

Against this order an appeal was filed before the Bar Council of India. After hearing both the parties, the Bar Council of India passed the followings orders.

1.The order of the State Bar Council was set aside.
2.He was found guilty of professional misconduct under S.35 of the Act.

3.The act sending wrong telegram misquoting the content of the court order is not an act fit for an Advocate and he was reprimanded with strong words.

6. A. Banumurthy v. Bar Council of Andhra Pradesh

DC Appeal No.3/1994

Fact of the Case:

The appellant was a member of the Andhra Pradesh Judicial service. When he was working as Metropolitan Magistrate at Hyderabad there were certain allegations of corruption against him. A departmental enquiry was conducted and e was served with an order of compulsory retirement and retired on 30-7-1991.

After compulsory retirement he applied for resumption of practice. The State Bar Council referred the matter to the Bar Council of India because he had been found guilty by the departmental enquiry. The Bar Council of India returned the matter to the Disciplinary Committee of the State Bar Council found him guilty of professional misconduct and suspended him from practice for a period of 2 years. Against this order the present appeal has been filed.

When the appeal was pending, he was allowed to resume his practice from 6-4-1994 by some court order. Bar Council of India continued the enquiry and finally held that since 2 years has already lapsed since his punishment for corruption charges, he shall resume his practice.

7. Dr. D. V. P. Raja v. D. Jayabalan

BCI DC Appeal No.43/1996

Fact of the Case and Decision:

The appellant lodged a complaint with the Bar Council of Tamil Nadu alleging that the respondent's application in the form of complaints addressed to various authorities amounts to professional to misconduct. The State Bar Council passed a resolution that there is a prima facie case of professional misconduct and it was placed before the Disciplinary committee of the State Bar Council for its adjudication.

Before the Disciplinary Committee the respondent raised a preliminary issue that the Disciplinary Committee has no jurisdiction in this matter because there is no connection between his standing as lawyer and his representation to various authorities. The Disciplinary Committee of the State Bar Council also accepted this

argument and dismissed complaint without going in to the merits of the complaint. The Disciplinary Committee held that there was no nexus or proximity in his standing as a lawyer and his to various authorities.

Against this order an appeal was filed before Bar Council of India. In the Bar Council of India, it was argued that the Bar Council of Tamil Nadu having passed a resolution that there is a prima facie case against the respondent, the Disciplinary Committee could not have dismissed the complaint without hearing it on merits.

After hearing both the sides the Bar Council of Tamil Nadu has passed a resolution that there is a prima facie case to be enquired in to by the Disciplinary Committee has no power to consider the question of its jurisdiction on the matter.
The decision of the Bar Council of Tamil Nadu is good and valid.

8. G. M. Hirmani v. Ishwarappa.

BCI DC Appeal No. 30/1995

Fact of the Case and Decision:

The petitioner filed a complaint against the respondent. Mr. Iswarapa (a practicing lawyer) in the Bar Council of Karnataka alleging professional misconduct on the following grounds.

1. The petitioner filed a partition suit against Grija Devi and Premadevi (O.S.No.293/87). The respondent Mr. Iswarappa was the general power of attorney holder of Smt. Girija Devi and Premadevi and also acted as Advocate for them in the said case. He misused his position as an Advocate and dominated the will of Girija Devi and Premadevi and purchased one portion of the suit property on 30-3- 93 from them.

2. On 4-6092 Mr. Iswarappa took the signature of kirmani in a ten-rupee bank bond paper promising to compromise the partition suit and thereafter committed theft of the same bond paper.

3. During the pendency of the partition suit Mr. Iswarappa often visited the house of the complainant in a drunken stage, through the complainant had asked him not to visit his house during the pendency of the suit.

4. Iswarappa has falsely filed a criminal case against the complainant (C.C.No.12/93) Which was dismissed after enquiry.

During the enquiry Iswarappa admitted that he was the general power of attorney of Girija Devi and Premadevi and has purchased their property for valuable consideration and paid the full amount and denied all other allegations.

The State Bar Council, after conducting a proper enquiry dismissed the complaint. Thereafter, the complainant filed an appeal before the Bar Council of India.

The Bar Council of India also dismissed the appeal on the following grounds.

1. The complainant had failed to prove that Mr. Iswarappa took signature of the complainant on a blank bond paper.

2. He has failed to prove that Iswarappa has purchased the property by misusing his power of attorney.

3. He failed to prove that Iswarappa acted as an Advocate for Girija Devi Premadevi in the partition suit. Iswarappa produced evidence that he never acted as council of pemadevi and Girijadevi in the partition suit and one Mr. Atchutha Giri was the Advocate for them in that partition suit. Thus, the complainant had failed to establish a case of professional misconduct against the respondent.

9. N. S. (Appellant) v. N. V. (Respondent)

BCI DC Appeal No.14/198

Fact of the Case and Decision:

The appellant was a Govt. Pleader and the respondent was a Senior Advocate of 33 years' experience in the Madras High Court. On 12-11-1986 when he was going to the Bar Association, the appellant informed him that he made a mention of a case before a Judge in which respondent was appearing for the opposite party. The respondent told the appellant that he had not been previously informed about it and that he has no notice that the appellant is going to make a mention in the case; so `I will see to it''. Immediately the appellant without any justification abused the respondent in a very bad manner using vulgar words.

K.V. filed a complaint before the Bar Council of Tamil Nadu. N.S. denied all the allegations, but admitted that heated exchange of words took place between them. After examining both the parties, the Disciplinary Committee found him guilty of professional misconduct and suspended him from practice for a period of 6 months. N.S. challenged this order before the Bar Council of India. The main question in the appeal is whether the abusive language used by the appellant against the respondent would amount to professional misconduct. The Bar Council of India held that it amounts to professional misconduct but it held that the suspension of N.S. from practice for a period of 6 months is not necessary and reprimanded with strong words

10. P. R. (Complainant) v. V. I. (Respondent)

BCI TR Case No.101/1998

Fact of the Case and Decision:

The complainant was the District Munisif Magistrate at Anakapalle from 19-11-84 to 8-4-85. The respondent was a practicing Lawyer there. The respondent was the Advocate for a respondent in a maintenance case. On 29-10-1985 when the case was called the Advocate as well as his client was absent, so ex-party order was passed. Therefore, the present respondent filed a contempt petition against the complainant (P.R) in his court alleging the following things.

1.The High Court has passed transfer order to P.R. on 20-10-1985 but, instead of handing over the charge and obey the order he continued there up to 8-11-1985 on certain pretest (arranged by him).

2.The complainant was wasting valuable time of the court and also the revenue of the Govt.

P.R. referred this contempt petition to the District Judge. District Judge referred it to High Court. The court advised P.R. to lodge a complaint against V.I. before the State Bar Council for professional misconduct. Hence P.R. filed a complaint against the respondent alleging professional misconduct because he has filed contempt petition on false grounds under his signature against the presiding officer by name and bringing down the reputation of he presiding officer. The respondent also acted on his own and not under the instruction of his client.

The Bar Council of Andhra Pradesh after enquiry held that by filing the said contempt petition against the presiding officer with serious allegation, the respondent has committed professional misconduct.

In the meantime, the respondent was also selected and appointed as District Munsif Magistrate and he ceased to be an Advocate. So, the Bar Council expressed its inability to pass any order of punishment against him for professional misconduct. So, they forward this order and other records to the High Court of Andhra Pradesh for necessary action.

11. Ashok Kumar Yadhav v. Bar Council of India (19/1/2015).

Facts:

Ashok Kumar Yadhav s/o Late, Farydevi Yadav president of North Mandiri. P.S. Budha colony district, patna, Ex Secretary General of District Patna bar Association Civil Court petitioner vs patna high court suc no. 1933 of 2014 at 19.01.2015 211. Further he pleased the operation of impugned notice contained in Annexture 10 during pending of this writ petition resolution no 110/2013 dated 01/09/2013 referred the main writ petition further he pleased to pass any other order in the interest of justice.

Judgements:

This writ brings this Court to the relief sought to be incorporated through the introventary application bearing IA No:1775/2014 the two actions taken by the State bar council acting in different sphere.

Court CWJ CNO: 1993 of 2014 at 19.09.2015 to in which view of the matter I.A. NO:1775 of 2014 stand disposed of with liberty to the petitioner to question the initiation of the disciplinary proceedings if so advised by way of an independent appreciation before an appropriate forum.

Penetrating back to the issued raised in the writ petition since this court is not personated to interface with Court orders of suspension and removal of Secretary District bar association patna either on merits or on account of the issue having been rendered infractions the writ petition stand dispose off.

12. C. Ravichandran Iyer v. Justice A.M. Bhattarcharjee (Disciplinary Power of Bar Council-Conduct of a Judge).

Facts:

The petitioner, practicing advocate has initiated the public litigation under article 32 of the Constitution seeking direction restrain permanently the bar council of Maharastra, and goa, Bombay bar association and the 2 to 4 respectively covering Justice A.M. Bhattacharjee [1st respondent]. The BBA filed a court an affidavit through its president. Sri tabal mohamadali chagla, the SCBA instead of filing written submissions sent to note with proposals to reopen the case Judges for decision after hearing them all that judiciary alone should monitor this bad behaviour and impeachable conduct of filed statutory effect.

Judgements:

If Circumstances permit, it may be statutory take the judge into confidence before initiating notion on the decision being taken by the chief justice of India the matter should rest at the bar association could High Court and await his response for the action taken there under for reasonable period in the case the allegations are against Chief Justice of a high court the bar school bring them directly to the notice of the chief justice of India way act as stated above – Complainant against a judge of the high court and the bar council of India unfortunately, recourse to this procedure was not taken in the case at hand, may be because of absence of legal sanction to such a procedure since the 1st respondent has would former president for future wait petition is accordingly disposed off.

13. Supreme Court Bar Association v. Union of India and others (17th April 1998)

Supreme Court found the contemner V.C Mishra an advocate guilty of committing criminal contempt of court for having interfered with and obstructing the course of justice by trying threaten overawed and over bear the court by the court by insulting disrespectful and threatening language the supreme court keeping in view gravity of the contumacious conduct of the contemner.

Aggrieved by the direction of suspension from practice given by supreme court bar association through, its honary secretary has filed this petition under article 32 of the constitution of India. Seeking following relief the court also made it clear that the high court or supreme court may be prevent contempt.

Judgements:

The decision given V.C. Mitra has been overawed in the present case and has held that the power under article 142 (2) cannot be assumed by the supreme court ignoring the precision of advocate.

Here the writ petition succeeds and is order accordingly.

14. An Advocate v. Bar Council of India and another on 29th September 1998.

Fact:

In this case bonofide at act of advocate who in good faith acted under the instruction of some one closely connected with his client and entertained a bonofide belief that the instruction were given under the authority of the client.

The suit was a for recovery of Rs, 30, 098, the complainant [client] had entrusted the brief of the appellant which he in his turn, had entrusted to his junior colleague [respondent] 2 who was attached to his office and was practicing along with him at his office at the material time courts casts and dispute in the suit was not settled at all and appellant mean stating that suit dismissed and he had also received hrlf of the constitution court fee with in 10 days since the date of the disposal of the suit.

Judgements:

We have therefore no doubt that upon the matter beging remitted to the bar council of India, it will be dealt with appropridetly in the right of the aforesaid prespeective we accordingly allow this appeal, set aside the order of the bar council of india. That in case judgement indeed by the court or any part thereof is reposited in law journals or polished elsewhere the name of the appellant shall not be mentioned because the matter is still subjudice and fairness demands that the name should not advocate vs bar council of India disposed off accordingly.

15. D.P. Chadha v. Tiriyugi Narain Mishra and others December 2000

Facts:

While the proceedings in a civil suit were underway in Jaipur, the complainant, Mr. Mishra, was occupied with an election in U.P. and was unavailable in Jaipur for an extended period. Sri D.P. Chanda, the appellant, possessed a blank vakalatnama and a paper signed by the respondent, both of which were given to him as his advocate in the first week of October 1993. The anil respondent his advocate November 17, 1993. Shri Chandha was not present when adjournment was taken from the Court Stating that parties, where upon the rewarding compromise or framing issue.

On November 20, 1993, Shri Rajesh Jain and Anil Sharma appeared on behalf of the plaintiff and defendant. They filed a compromise petition along with a receipt, indicating that the complainant received ₹5,000,00 as compensation for damages to the school building. The trial court directed verification of the compromise on December 17, 1993. During the investigation, it was discovered that Advocate D.P. Chandha had provided certain papers to Anil Sharma, who was then asked to obtain a degree based on those papers. The disciplinary committee found D.P. Chandha guilty of professional misconduct. Subsequently, the appellant appealed to the Supreme Court.

Judgements:

The sentence awarded by the State Bar Council was upheld and restored, thereby setting aside the award passed by the Bar Council of India.

Contempt of Court

Selected Cases relating to Professional Misconduct and Contempt of Court:

1. Pawan Kumar Sharma v. Gurdial Singh (A.I.R. 1999 S.C. 98)

Sharma enrolled as an Advocate in the Punjab& Haryana Bar council in January 1990. At the time of his enrolment his family was doing taxi business and he himself having 4 taxies in his name. A complaint was filed against him alleging professional misconduct that he is running taxi business.

Since the State Bar Council could not able to dispose off the complaint within one year, it was transferred to the Bar Council of India. Sharma denied this allegation and showed documents proving that he has sold the Taxies after the enrolment. But the Bar Council of India did not accept this documents and finally passed an order suspending him from practice for one year for professional misconduct on the ground that he was running a taxi business after enrolment.

He challenged the order before the Supreme Court contending that though he had 4 taxies in his name before his enrolment he had sold the taxies after the enrolment and discontinued the taxi business. The Supreme accepted the argument and passed the following orders.

1. Simply because a person is the owner of the taxies, he cannot be treated as directly doing the business.

2. Rule 47 of the bar Council permits an Advocate to act as a sleeping partner in any business which is not inconsistent with any profession.

3. The charge of professional misconduct is a quasi-criminal charge, so it should be proved beyond reasonable doubt. In this case the person filed the complaint has failed to prove the charge beyond reasonable doubt.

4. The appellant has produced documents showing the sale of the taxies after enrolment. The respondent has failed to prove that it is untrue.

5.The order of the Bar Council of India is set aside because professional misconduct is not approved.

2. Mahabir Prasad Singh v. M/S Jacks Aviation Pvt. Ltd. (A.I.R. 1999 S.C. 287)

(AIR 1999 SC 287)

The plaintiff filed a suit against the defendant for recovery of possession of the building. During the pendency of the suit on 15-5-1998 the Delhi Bar Association passed a resolution boycotting that court due to his improper behavior towards the lawyers. Taking advantage of this boycott resolution the defendant filed a petition asking the judge to transfer the case, Suo moto, to another court because his advocate will not appear in the court In the future. The transfer petition was dismissed.

This order was challenged before the High court. The High Court stayed the proceedings and the case was adjourned for long period. Aggrieved by the stay of proceedings and the long adjournment the plaintiffs filed an appeal before the Supreme Court.

In the appeal the Supreme Court gave the following orders.

1. If any councel does not want to appear in the court, that too for justifiable reasons, the case should be returned to the party so that the party can engage in another councel.

2. Retaining the case without returning it to the client and abstaining from conducting the case in the court amounts to professional misconduct.

3. The court should not adjourn the case on the ground of Advocates strike or Advocates decision of boycott the court.

4. During the court hours even if the Advocates are not appearing the court should proceed with the trial of the case.

5. Court should not yield to the pressure tactics of boycott or any kind of brow beating.

6. Judicial officers should behave cardialy towards the Advocates.

3. Supreme Court Bar Association v. Union of India (A.I.R. 1998 S.C. 1895)

V.C. Mishra, then the Chair Man of the Bar Council of India was punished by the Supreme court for contempt of court and he was suspended from the practice for a period of 3 years.

The charges against him was that in the court by using insulting, disrespectful and threatening language he has threatened the judges. His act has hurt the judges and he has acted in such way to abstruct the course of justice.

The Supreme Court Bar association challenged this order and raised the following issues.

1. The Supreme Court while dealing with the contempt proceedings cannot suspend Advocate from the practice.

2. Bar Council alone can pass the order suspending an Advocate from practice.

3. For professional misconduct original jurisdiction is vested with the Bar Council.

4. Supreme court vested with only appellate jurisdiction to hear the appeal against the order of the Bar Council of India.

5. Art. 129 of the constitution does not confer any original Jurisdiction to the Supreme court in the matters of professional misconduct.

The main question before the court was whether for contempt of court committed by an Advocate the Supreme Court can pass an order suspending his practice for a specified period.

The Constitution bench of the Supreme Court allowed the petition and issued the following orders.

1. Supreme court's power to punish for contempt is quite wide, yet it is limited.

2. In the contempt of the court proceedings, the court cannot simultaneously enquire into the professional misconduct also by adopting summery procedure.

3. Professional misconduct should be enquired only by following the prescribed procedure mentioned in the Advocates Act.

4. Supreme court can award punishment only for contempt of court and not for professional misconduct.

5. For the contempt of the court, simple imprisonment of 6 weeks is given.

6. This punishment is suspended for 4 years.

7. The punishment shall be activated, if V.C. Misra again indulges in any other act of contempt of court within the said period of 4 years.

4. P. D. Gupta v. Ramamurthy (A.I.R. 1998 S.C. 283)

One Mr. Krishnan died on 5-6-1980. His sister Vidyawati filed a suit for declaration of title in her favour for certain properties of Mr. Krishnan, Ramamurthi and others resisted the suit claiming title in their favour. P.D. Gupta was the Advocate of Vidyawati. When the suit was pending P.D. Gupta purchased part of the disputed property for Rs.18000 and sold it for 34000 immediately.

Mr. ramamurthi filed a complaint against P.D.Gupta before the Delhi Bar Council alleging professional misconduct. The main allegation is that he has purchased the part of the disputed property from his client during the pendency of the suit.

Since the enquiry was not completed within one year the matter is transferred to the Bar Council of India. After hearing both the parties, the Bar Council of India passed an order suspending him from the practice for a period of one year. The court held that a shadow of undue influence is present when an Advocate buys property of his own client.

Against this order P.D. Gupta filed an appeal before the Supreme court. In the appeal his main contention was that his client or her legal heirs has not filed any complaint regarding professional misconduct, and the enquiry conducted based on the complaint by some other person is wrong.

The Supreme Court did not accept this argument and passed the following orders.

1. Any person shall file a complaint regarding professional misconduct against an Advocate.

2. Bar council shall enquire into the allegation of professional misconduct, though the complaint is filed by a stranger, because, the Bar council is concerned with the conduct of Advocates.

3. The order passed by the Bar Council of India is confirmed.

5. Robtas Singh v. Commissioner Agra Division (A.I.R. 1997 S.C. 278)

The commissioner of Agra Division, and certain other officials have violated the order of Allahabad High Court dated 6-9-93. Consequently, the Allahabad High court issued notice to show cause why action cannot be taken against them for contempt of court. In this matter the additional standing counsel of the State Mr. Kazim appeared for the officials.

An objection was raised by the State law Officer and some criminal Advocates, regarding the appearance of the govt. Standing councel for the accuseds in the contempt of court proceedings.

In support of their claim they submitted the Legal Remuneration Manual of U.P which deals with the duties of a Govt. Advocate. It says that the Government Advocate shall not appear for the defense or any criminal or quasi-criminal case; nor shall he advise any party against the prosecution in any criminal case. After hearing the objection the Allahabad high Court passed the following orders.

1. Contempt proceedings are quasi-criminal in nature so it is the duty of the state to prosecute the contemner even if they are govt. officials.

2. Govt. Advocates should not appear for the persons charged with the contempt of court.

3. Govt. officials should engage other Advocates in the contempt proceedings and they should pay for them from their pocket.

4. If the Govt. officials are acquitted then they shall claim the amount spent by them for spending the case from the Govt.

6. Harish Chander Singh v. S. N. Tripathi (A.I.R. 1997 S.C. 879)

Mr. Daya Ram engaged Mr. Harish Chandra as a lawyer in a consolidation proceeding pending before the consolidation officer. Since Daya Ram could not attend the case regularly, harish Chandra asked him to appoint a mukhtar. Daya Ram appointed one Mr. Syed Hussain, a junior Advocate of harish Chandra as the mukhtar (power agent).

Syed Hussain in the capacity as mukhtar sold certain properties of Daya Ram to the father of Harish Chandra (This he did under the pressure of his senior Harish Chandra).

Daya Ram filed a complaint against both Harish Chandra and his junior Syed Hussain before the Local Bar Association. The president of the Bar Association forwarded the complaint to the U.P. State Bar Council. Since the matter was not disposed off within one year it was transferred to the Bar Council of India. During the enquiry Daya Ram submitted the following.

1. The mukhtar was obtained fraudulently.

2. Therefore, the sale deed executed by using the mukhtar should be treated as void.

3. The act of Harish Chandra and Syed Hussain amounts to professional misconduct, so they should be punished for that.

Syed Hussain confessed the guilt stating that being a junior, by obeying his senior, he did these things and asked for pardon.

Harish Chandra contented that his father was living separately and he did not have any contact with him. He also contented that Syed Hussain is not his junior.

7. Hikmatali Khan v. Ishwar Prasad Aiyar (A.I.R 1997 S.C. 864)

Ishwar Prasad Arya was an Advocate practicing in Badann, U.P. He stabbed his opponent with the knife for that he has convicted 3 years rigorous imprisonment. On appeal the High court also confirmed the punishment.

Thereafter, by using a forged letter of the Governor asking the court to suspend his sentence under art. 161 of the constitution he got his conviction suspended and he was released. Later the sessions Judge found the letter as forged one and he lodged a complaint with the Bar Council of U.P. for necessary action against him. The State Bar Council debarred him from practice for 2 years. On appeal the Bar Council of India set aside this order on the ground that there is no clear evidence to show that the Advocate himself has prepared that forged letter.

Subsequently by taking into account of the bad conduct of the Advocate ie. Conviction for the offence under S.307 of I.P.C and his name being entered by the police in a register which contains the list of persons with bad character he was debarred for the practice for a period of 3 years by the State Bar Council. On appeal this order was also set aside by the Bar Council of India because it is interconnected with the earlier matter. Hikmit Ali Khan preferred an appeal before Supreme Court against this order.

The Supreme court held that the second order of the State Bar Council was based on totally a different ground not connected with the grounds of the first order and the Bar Council of India was eronious in setting aside the second order of the U.P. Bar Council. Further Supreme court held that the gravity of the misconduct committed by him is so serious and the punishment of suspending him from practice for 3 years is not sufficient and ordered the removal of his name from the roll of Advocates.

8. Prahalad Saran Gupta v. Bar Council of India (A.I.R 1997 S.C. 1338)

Gupta was practicing Advocate at Ghaziabad. He was appearing for the decree-hold in an execution case between Atma Ram manak Chand V. Shriram in the Ghaziabad court.

The degree holder has filed a complaint in the State Bar Council against his Advocate (Gupta) alleging the following professional misconduct.

1. He has colluded with the judgement debtor and accepted Rs. 1500 out of the total decreed amount and allowed time for the payment of the remaining balance.

2. The amount so received is not given to the degree holder.

3. He has helped the judgement Debtor to get the execution stayed by the High Court.

4. When he was Acting as a standing counsel for the railways, he drafted the notice under S.80.C.P.C to be served to the railways on behalf of M/s. Agarwal traders who was the compliment against the Railways. This is a serious professional misconduct.

The draft prepared by his own handwriting was produced before the disciplinary committee.

Gupta denied all the allegations and informed that he was holding the amount of Rs.1500 as trustee on behalf of his client. Since the enquiry was not completed within one year the matter was transferred to the Bar Council of India.

The Bar council of India has found the appellant guilty of serious professional misconduct and passed an order suspending him from the practice for a period of one year.

Gupta challenged this order before the Supreme court. The Supreme court passed the following orders.

1. It is not advisable for the Disciplinary Committee to base its conclusion purely on the basis of its own comparison of the hand writing of Gupta with the alleged draft prepared by him. The court held that the charge of professional misconduct is quasi-criminal in nature requires proof beyond reasonable doubt.

2. Addressing a letter to the counsel of the opposite party (judgement debtor) in the execution proceedings amounts to professional misconduct.

3. Holding the money with him which he has received in the execution proceedings without any sufficient reason amounts to professional misconduct.

4. For this misconduct suspending him from practice for 1 year is too much , So the Bar Council of India’s order is set aside and he was reprimanded with strong words.

9. Dr. Haniraj L. Chusani v. Bar Council of Maharastra (A.I.R 1996 S.C. 1708)

Dr. Haniraj was a medical practitioner studied law and wanted to enrole as an Advocate and to continue the medical profession also. He applied to the Bar Council of Maharashtra to enrole himself as an advocate. The State Bar Council rejected his application because the Bar Council rules prohibits a person to enrole as an Advocate if he is already carrying on some other profession.

He challenged this rule before the High Court and prayed for an order to declare that the said rule as arbitrary, unreasonable and violative of Art 21. The High Court summarily dismissed the petition. Thereafter he filed a special leave petition before the Supreme Court.

In the Supreme Court he submitted the following arguments

1. Advocates act has delegated excessive and unlimited power of rule making power to the Bar Council. This is against the principles of rules of law.

2. Rules made by the Bar Council by using this delegation should be declared as void.

3. He should be treated equally along with the other law graduates.

4. The protection of equality before law should be given to him (Art 14).

The Supreme court has not accepted these arguments and dismissed the petition and passed the following orders.

Bar Council is justified in framing rules prohibiting persons carrying on the other business to enrole as an Advocate.

1. Legal profession requires full time attention hence; An Advocate cannot be allowed to do any other business or profession.

2. Bar Council rules is inter vires to the constitution and it is not violative of Art. 14,19 (1) (g) and 21.

10. Inre Dr. D. C. Saxend and. U. Saxena v. Hon'ble Chief Justice of India (A.I.R. 1996 S.C. 2491).

Dr. D.C. Saxena was a professor of English University. He filed a writ petition in the Supreme Court by way of public interest litigation seeking to recover from the Prime Minister Mr. P.V. Narasima Rao the expenditure incurred for his private use of Indian Air Force Air Craft and Helicopters. The writ petition was dismissed summarily without going into the merits by the bench consisting of Hon'ble chief Justice Mr. A.M. Ahmedi and others.

Thereafter, Dr. D.C. Saxena filed a second writ petition against the chief justice of India. In this petition he contended that his first writ petition was dismissed by Chief Justice by receiving brief and he prayed for the following.

1. The respondent be declared as unfit to hold the office of chief justice of India.

2. His citizenship should be withdrawn and a case be registered against him for forgery and fraud.

3. Direction to prosecute the Respondent under the prevention of Corruption Act.

4. Direction to the Chief Justice of India to give from his pocket the expenses incurred for filling this writ petition.

The Supreme court issued a show cause notice against him for contempt of court because several averments in the writ petition are scandalous, and the allegation made are reckless attack on the chief justice of India.

Saxena denied all the allegations. He pleaded that he had filed this petition only on public interest and there is no bad intention in filing this petition. He even pleaded that if the court wants, he is ready to withdraw the petition or ready to make the necessary changes in the petition.

The court did not accept this argument and held that withdrawal or making changes in the petition cannot cure the contempt already committed by the scandalous remarks made in the petition. The court passed an order of three months simple imprisonment and a fine of Rs.2000 for contempt of court and the writ petition was also dismissed.

11. Sambhu Ram Yadhav v. Hanuman Das Khatry (2001 16 SCC 165).

Facts:

The complainant filed a case against the advocate, Mr. Hanuman Das Khatry (respondent), before the Bar Council of India. The allegation was that the advocate wrote a letter to his client, stating that the judge who had decided his case accepts bribes. The advocate suggested that the client pay Rs. 10,000 for a favorable decision.

An appeal was made to the Bar Council of India (BCI) under Section 37 of the Advocate Act, 1961. The BCI directed that his name be struck off and that he be permanently debarred from practicing.

Advocate filed a review under Section 44 (S. 44) of Advocate Act, accepts the review application.

Judgements:

The entire decision of the Bar Council of India (BCI) was based on cogent evidence and relevant considerations. Additionally, in the review petition, the BCI cannot take a different view on the same facts as it did in this case. Consequently, the original order of the BCI was restored by the court, permanently restraining him from practicing.

12. B.M. Verma v. Uttarkhand Regulatory Commission (Appeal No.156 of 2007).

Facts:

In this case, the court noted that it was given wide power available to a court exercising contempt jurisdiction. In the case of its own motion vs. State, dealing with contempt proceedings involving two senior advocates, it was observed that the court possesses wide power when exercising contempt jurisdiction. This observation aligns with the Supreme Court's stance in *S.C. Bar Association v. Union of India*. While in the case of *Mr. Parashar H.L. Sehgal*, it was observed that he can be considered a "hangman." Similarly, the *Anil Kumar Sarkar v. Hirak Ghosh* case reiterates this principle.

In this case, the court noted that it was given the wide power available to a court exercising contempt jurisdiction. In the case of its own motion vs. State, dealing with contempt proceedings involving two senior advocates, it observed that given the wide power available to a court exercising contempt jurisdiction, as observed by the Supreme Court in S.C. Bar Association v. Union of India, Mr. Parashar H.L. Sehgal, it was observed that one can be a hangman. While in Mr. Parashar H.L. Sehgal, it was observed that Anil Kumar Sarkar v. Hirak Ghosh reiterates this.

Judgements:

1. The penalty of Rs. 500 per day is imposed by the court in case of default in depositing the penalty amount.

2. The penalty of Rs. 10,000 was deposited with the state commission within days from the receipt of the order, and the appeal has been disposed of.

13. R.K. Anand v. Registrar of Delhi High Court (2009 85 SCC 106).

Facts:

R.K Anand, who was practicing in the Delhi High Court, filed a writ petition before the Delhi High Court challenging the decision of the respondent to cancel his license to practice law in the high court.

The respondent registrar of the Delhi High Court canceled the petitioner's license on the grounds of professional misconduct, as he was found guilty of engaging in unethical and unprofessional practices while appearing in court.

Judgements:

The Delhi High Court rejected the petition of R.K Anand and held that the respondent, registrar of Delhi High Court, holds the practice of law in the High Court. The cancellation of the license is valid, and unprofessional practice while appearing. The writ petition was dismissed, and the order upholding the respondent's license was upheld.

14. Harish Uppal v. Union of India (2003 (1) ACC MR (SC) 1169).

The petition in the present case was on Ex Army officer.

In 1972, the petitioner was stationed in Bangladesh, where accusations related to embezzlement were leveled against him. Subsequently, he was brought before a military court in India.

He filed a pre-affirmation application in a probate court to review the matter, and he received a reply from the court after an extensive delay of 11 years, even though the limitations period for review had expired.

A special petition was filed by the petitioner regarding the illicit actions of the advocate.

Judgements:

The strike by an advocate is unlawful and illicit. A strike might be allowed in the most extraordinary of uncommon situations where respective meetings with the press and media can be given time till the fine, as long as it does not affect the working of the courts.

15. J.S. Jadhav Mustafa v. Haji Mohammed Yusuf (AIR April 7, 1993 SC 1608).

Facts:

The Respondent in the current case engaged the appellant in an earlier suit in which he was the defendant.

The appellant, as per the instructions in the letter, withdrew a total amount of Rs. 50,379 from the Court receiver but only paid Rs. 18,000 to the respondent. The appellant then submitted a reply to the notice.

The disciplinary Committee said that the burden of proof with respect to the total sum being paid to the respondent was on the appellant.

He subsequently filed the present appeal against the order of Disciplinary Committee of BCI.

Judgements:

The court ordered a suspension of 5 years. Besides the punishments to be given to the appellant, the court, with respect to justice being served to the respondent, was of the view that the respondent should not be driven to a civil court for recovery of this amount after the appellant was found guilty. This directed a decrease in favor of the respondent for a sum of Rs. 22,379 with interest at 9% per annum from the date of the complaint till the date of payment. The appeal was dismissed.

Unit - I Professional Ethics:

Professional Ethics - meaning and nature - Professional misconduct - meaning and ambit - Organisation, powers and jurisdiction of State Bar Councils and Bar Council of India - Disciplinary Committee of state Bar Councils and Bar Council of India - Organisation, procedure and powers - Remedies against order of punishment.

1. Professional Ethics:

Professional ethics refer to the moral guidelines and standards that govern the conduct of individuals in a particular profession. It outlines the expected behavior, responsibilities, and values that professionals should adhere to while performing their duties. These ethics are designed to ensure integrity, honesty, and professionalism within the profession.

1.1.Professional Misconduct:

Professional misconduct is any behavior or action by a professional that violates the ethical standards and codes of conduct set forth by their respective professional body or organization. It includes actions such as fraud, dishonesty, negligence, conflicts of interest, breach of confidentiality, and other unethical practices that undermine the trust and integrity of the profession.

The Importance of the Legal Profession

The legal profession plays a crucial role in the administration of justice. **Lawyers assist the court in arriving at correct judgments**. The language of laws and regulations can be complex and confusing, and lawyers help interpret and apply these laws.

Lawyers are not merely puppets of their clients, but have a responsibility to the court for the fair and honest conduct of a case. They are "agents, not of man who plays them but are acting in the administration of justice."

As C.L. Anand stated, a sound system of justice should have three key ingredients: **a well-planned body of laws, a judicial hierarchy of the bench and bar, and learned professionals guided by high principles of conduct**.

The legal profession is not merely a money-making occupation, but a branch of the administration of justice, created for the public good.

The Legal Profession in Pre-British India

During the Hindu period, the courts derived their authority from the king, who was considered the fountain of justice. The king's court was superior to all others, and the king was advised by his councilors but not bound by their advice.

There is no mention of a formal legal profession in Kautilya's Arthasastra, suggesting such a class may not have existed during the Hindu period. However, Justice Ashutosh Mukherjee believed the legal profession was in existence. During the Muslim period, litigants were represented by a body of persons known as Vakils. The court of the king's administration determined who could appear as a Vakil in a Zilla Court. The legal profession was not yet organized during this time, with Vakils acting more as agents for their principals than as lawyers.

Legal Profession during British Rule in India

During the British period in India, the legal profession underwent significant changes and developments. Here's a simplified overview of the key events and changes that occurred during this time:

1. Early Establishment of Judicial System:

The East Indian Company initially showed little interest in the legal profession, and there was no uniform judicial system in the settlements of the company.

However, by a Charter of 1726, a uniform system was established in each Presidency Towns, including Bombay, Calcutta, and Chennai, with the introduction of Mayor Courts.

2. Lack of Regulation for Legal Practitioners:

Initially, there were no specific regulations for legal practitioners, and there was no provision for legal training. This led to many individuals with no knowledge of the law practicing law.

3. Development of Legal Profession:

After the Regulating Act of 1773 and the Charter of 1774, there was significant development in the legal profession.

The crown abolished the charter of 1774 and established the Supreme Court of Judicature at Calcutta, leading to the abolition of Mayor Courts.

4. Regulation of Legal Practitioners:

The Charter of 1774 empowered the Supreme Court to approve, admit, and enroll advocates and attorneys at law, who were the only authorized individuals to appear and act for suitors of the Supreme Court.

5. Limited Authorization for Indian Legal Practitioners:

The term 'Advocate' initially extended only to English and Irish Barristers and members of the faculty of Advocates in Scotland, while the term 'Attorneys' referred only to British attorneys or solicitors. This meant that Indian legal practitioners were not initially authorized to appear before the Supreme Court.

6. Establishment of High Courts:

The most significant development during the British period was the enactment of the Indian High Court Act 1861, through which the crown established High Courts at each presidency town, empowering them to approve, admit, and enroll advocates deemed fit by the High Court.

1.2.Legal Practitioners Act, 1897

In the year 1879, the Legal Practitioners Act was passed to consolidate and amend the law relating to legal practitioners. It empowered an advocate or Vakil on the roll of any High Court or pleader of the Chief Court of Punjab to practice in all the courts subordinate to the court on the roll of which he was entered.

Under the Legal Practitioners Act 1879, the term “legal practitioner” has been taken to mean Advocates, Vakil, or Attorney of High Court, and pleader. This act was passed to consolidate and amend the law relating to legal practitioners. Advocates or Vakil on the roll of the High Court can practice throughout India.

- **Section 13** empowered the High Court to suspend or dismiss a pleader or Mukhtar guilty of unprofessional conduct.
- **Section 5** deals with persons on the roll who can practice.
- **Section 6** deals with suspensions and dismissal of pleaders or Mukhtars.

- **Section 7** made provisions in respect of issuance of certificates.
- **Section 13** dealt with empowering the High Court regarding reporting suspension of members.

1.3.Indian Bar Committees, 1923

In 1923, under the Chairmanship of Sir Edward Chamier, the Indian Bar Committee was constituted to consider the organization of the Bar on an all-India basis and the establishment of an all-India Bar Council for the High Court. The committee recommended that a single grade of practitioners should be established in all High Courts, to be called Advocates. It also suggested the establishment of Bar Councils at all High Courts, granting them powers to take disciplinary action against Advocates for misconduct.

The High Courts were given authority to refer cases to the Bar Council for inquiry and reporting. **Each Bar Council consisted of *15 members, with 10 members elected from among advocates, 4 members nominated by the High Court, and 1 member being the Advocate General.***

1.4.Indian Bar Council Act, 1926

In the year 1926 the Indian Bar Council Act was enacted to give effect to the some of the recommendations of the Indian Bar Committee. The main object was to provide for the constitution an incorporation of Bar Counsel for certain courts.

1) To confer powers and impose duties as such court.

2) To amend the law relating to the legal practitioners of such courts.

The distinction between Advocates and Barrister, abolished under Section 10. The High Court got power to reprimand, suspend or remove from practice of advocate for guilty of professional misconduct and other misconduct based on complaint.

1.5.Legal Profession after Independence

In the year 1951, the All-India Bar Committee, appointed by Chairmanship of Justice S. R. Das, recommended establishing an All-India Bar Council and branches in each state. The powers vested with the Bar Council included enrollment, suspension, removal, and the previous powers conferred on the High Court were removed. A

common roll was proposed to allow practice all over India. Subsequently, the Advocates Act of 1961 was enacted.

1.6.Advocates Act, 1961

Admission and Enrolment:

Section 16 to 12 deals with regarding qualification for admission and enrolment before the Bar Council an Advocate.

Two Clauses (1) Senior Advocates and (2) Other advocates.

Senior Advocate:

A Senior Advocate is a designation given to lawyers in India who are recognized for their exceptional ability, standing at the Bar, special knowledge, or extensive experience in the field of law. This distinction is governed by the Bar Council of India under Chapter-I Part (VI) Section 49(1) of the Advocates Act.

Restrictions and Responsibilities of a Senior Advocate:

1. **Designation Criteria:** Senior Advocates are designated based on their demonstrated ability, standing at the Bar, special knowledge, or deserving such distinction as per the criteria set by the Bar Council of India.
2. **Representation Limitations:** A Senior Advocate is restricted from appearing in the Supreme Court without an advocate on record or without an advocate present. They are also not allowed to accept any brief directly from clients.
3. **Drafting Restrictions:** Senior Advocates are prohibited from accepting instructions to draft pleadings, affidavits, provide legal advice, prepare evidence, or engage in any drafting work similar to that required in court proceedings.
4. **Fee Structure:** Junior advocates or other legal professionals may engage a Senior Advocate for their expertise by paying them a fee that is considered reasonable by the Senior Advocate.

Eligibility for Admission on State Rules

1) Citizen of India or other Country permitted to practice:

2) 21 years age or above

3) Obtained a law decree

Sudeer-v. - Bar Council of India in this case AIR 1999 SC 1167.

Supreme Court held the Bar Council of India Rule providing for pre-enrolment training and apprenticeship is ultra-vires as per the rule making power of the Bar Council of India available fact under the Advocate Act.

Haniraj L. Chulani v. Bar Council of Maharastra and Goa. The Supreme Court in this case held that a person carrying on another profession not allowed to practice or enrol as advocate i.e., Doctor is not violative of Article 21,14,19,18 of the Constitution of Law of India.

Indian council legal aid and advice v. BCI Supreme Court held (AIR 1995 Section 1691) the rule departing person who have completed the age of 45 years is beyond the rule making power of Bar Council of India.

Disqualification of Enrolment:

Section 24-A Advocates Act that no person shall be admitted as Advocate.

1. If he is convicted of an offence involving moral

2. If he is convicted of an offence under the provision of the untouchability offence (Act 1958).

But after 2 years is elapsed since his release.

Section 30 Deals with right to practice through the termitary to which the advocates act extends all courts including supreme court tribunal.

But this section have not been brought into effect by the Central Government. Hence the advocate continues to be debated from appearing in many tribunals such as Industrial Tribunal, Family court etc.

Important Powers of Bar Council and Functions of Bar Council

1. To admit person an advocates on its rolls.

2. Preparation and maintenance of such rolls.

3. To entertain and determine cases of misconduct against advocates.

4. To promote, safeguard, privileges of advocates.

5. To promise and support law reforms supervision and counsel of other state bar.

6. To promote legal education:

7. To lay down standards of legal education.

8. To recognise degrees for enrolment.

Professional Ethics

1. Section 49 (1) (c) of the Advocates Act, 1961 empowers the Bar Counsel of India.

Duty to the Court

1. Advocate is required to conduct himself with dignity and self-respect. Not to complaint

against judicial officer of grievances to be make complaint to the proper authorities.

2. To maintain respect to court and dignity of the judicial officer.

3. Not to influence the decision of the court by any illegal or improper means.

4. Prohibit private communication with Presiding Officer / Judge.

5. Not to encourage client unfair practice or from doing anything in relation to the court.

6. To appear in the prescribed dress and his appearance shall always be presentable.

7. An advocate shall not either appearance in any way before a Court Trial if the role of any member thereof in related to advocate.

8. Not to wear bonds or grown in public places other than in court.

9. Not to appear if he got any receiving interest or he is a exercise a member on director of a company or corporations.

Duty

Rule 11 to 33 deals duties of advocate to his client.

1. An Advocate is bound to accept any brief in special circumstances he may refuse to accept a particular brief. S. J. Chaudry v. State (AI R 1996 SC 98) Supreme Court held that if an advocates accepts the brief of a case attend day to day and if he fails and he does not do so, he will be held liable for breach of professional duty. Shall not withdraw from engagement.

2. If he does, notice to be given to the client and he is bound to refund such part of fee as has not been spent.

3. If situation warrants in before in future if he happens to be witness he should not accept the brief.

4. To make help and frank disclosure to his client relating to his conviction with the parties any controversies likely to arise at the time of taking brief.

5. To uphold the interest of his client.

6. If a advocate appear for prosecution he should not conduct the case lead to conviction of the innocent.

7. Advocate shall not commit directly or indirectly a breach of the obligation imposed by Section 126 of Evidence Act professional communication.

8. Not to be a party to fermenting of litigation.

9. Only act on the instruction of client and not others.

10. The fee of an advocate depending upon the success of the suit is considered as opposed to the public policy. Also, not consistent fee or percentage of the benefit and will be arrived by client.

11. Shall not buy or traffic in a stipulate for or agree to receive share or instruct in any actionable claims

12. Not to bid or purchase any property he was professionally engaged.

13. To keep proper account for the money entrusted to him.

14. Any amount is received on behalf of client that should be given to him.

15. On demand from client a copy of the account to be furnished.

16. Rule 32 prohibits an advocate to lend money to his client for the purpose of any legal proceedings or actions.

In V.C. Rangadurai V.D. Gopalan Supreme Court observed that the ratio between the advocate and his client is purely personal involving highest personal trust and confidence. P.O. Gupta v. Ram Murti (AIR 1998 SC 283)

An advocate purchased a property at a very low price from his client which is a subject matter of litigation and sold the same to third person and made profit. He was held of professional misconduct.

Harish Chand Singh v. Tripathi a Senior Advocate appointed his own junior as Mukhtar of complaint in consolidation case. He misguided his junior and tried to dispose of the property in favour of his own father. Senior Advocate held guilty of professional misconduct

Duty to Opponent

Rule 34 and 35 of BCI

1. Rule 34 provides that an advocate shall not in any way communicate or negotiate upon the subject matter of controversy with any party represented by an advocate except through that advocate.

2. Rule 35 deals that an advocate shall do his best to carry out all promises made to the opposite party even though not reduced to writing or enforceable under the rules of the court.

Duty to Colleagues

Rule 36; to 39 of BCI

1) Shall not solicit work or advertise (either direct or indirect) by way of circulars, advertisement, (brokers), putting slide in cinema theatres. The name board should be a reasonable size.

An Advocate not permit his name to be used in aid of or to make possible the unauthorised practice of law by any agency.

Shall not accept a fee less than the fee taxable under the rules when the client is able to pay the same R - 39 An advocate shall not enter appearance in any case in which there is already a vakalath (Civil cases) or memo of appearance (Criminal Cases) filed by an advocate engaged for a party except with his consent (change of vakalath)

1.7.Seven Lamps of Advocacy:

A good advocate should possess some essential qualities and equipment.

1) **Honesty:** The nobleness of legal profession lies in honesty. Advocate should not do any act which will lead to professional misconduct. He should disclose the real facts and legal profession to his clients frankly.

2) **Courage:** An advocate must possess courage which is the quality that enables a person to control fear in the face of danger, pain, misfortune, etc. He should not fear about the executive and politicians. He must perform his duty to safeguard the interests of his client.

3) **Industry:** Industry is the quality of being hard-working; being always employed usefully.

Advocacy is an intellectual profession. Intelligence and knowledge will be sharpened with hard-work and strenuous efforts.

4) **Wit:** Wit means clever and humorous expression of ideas; liveliness of spirit. Wit lessens the work load of an advocate. It relaxes his mental strain.

5) **Eloquence:** Eloquence means fluent speaking and skillful use of language to persuade or to appeal to the feelings of others. Eloquence attracts the attention of the listener.

6) **Judgment:** Judgment is an intellectual capacity, 'the inspiration which enables a man to translate good sense into right action'. An advocate could be in a position to judge the merits and demerits of the case on hearing the brief and seeing the document. He should inform his client the legal position openly after judging the issues.

7) **Fellowship:** Fellowship means the membership in friendly association or companionship.

8) (7+1) **Tact:** Tact means handling people and situations skilfully and without causing offence. An advocate must be in a position to tackle and win his client, opponent party, opponent advocate in a smoother way. An advocate should not quarrel with Court or loose temper over trifle things in the Court and outside.

Other Rules

Rule 40 requires that every advocate to pay certain sum to the State Bar.

Duty to Render Legal Aid

Every advocate bear in mind that anyone genuinely in need of lawyer is entitled to legal assistance even though he cannot pay for fully or adequately legal assistance.

To the indigent and oppressed is one of the highest obligations as an advocate owes to society.

Restriction on other Employment - Rule 47 to 52 BCI

An Advocate shall not personally engaged in any business but he may be a sleeping partner in a business. An advocate who has inherited or succeeded by survivorship to family business may continue it but may not personally participate in the management thereof.

Right to Lien

An Advocate can claim general lien upon the deeds and papers in his hands for the fee payable to him but there is no general lien.

State v. Narsingh Nair (AIR 1955 Orissa Page 105) in the case it is held that an advocate in the absence of an express agreement cannot claim a lien to hold, if until his own accounts are settled. (J.S. Jafhar v. Mustafa H.M. Yusur (AIR 1993 SC Page 1335)

Advocate withdraw certain amount on behalf of his client from the court receiver but did not pay the whole amount to the client. He was held guilty of professional misconduct.

Advertising

In the matter of thirteen advocate Allahabad AI R 1934 1067.

It is well recognized rule of etiquette in the legal profession that no attempt should be made to advertise on self directly or indirectly. Such a course of action tends to dignify of the Hon'ble Profession.

In England no barrister is allowed to write to solicitors or even to brother practitioners on circuit enrolling his services experience ability or work advertisement of all forms are considered to be highly improper.

Professional or Other Misconduct

Section 35 of the Advocate Act provides for punishment for professional or other misconduct. On receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its

roll has been guilty of professional or other misconduct; it will be referred to its disciplinary committee.

Power (Punishment)

After giving notice, opportunity to the advocate the State Bar council may make the following orders:

1) If no prima facie case, then dismiss the complaint.

2) Reprimand the Advocate; Suspend the advocate from practice for such period it may deem fit.

3) Remove the name of the advocate from state roll of advocate.

The effected person can also file appeal to the Bar council of India from state Bar under section 37 of the Advocates Act.

Appeal to Supreme Court:

Under Section 38 of the Advocates Act appeal can be filed within 60 days to the Supreme Court.

Unit - II Bar Bench Relations:

Contempt of Courts Act - Contempt of Court - Meaning and Nature - Categories of contempt of Court - Contempt Jurisdiction of the Subordinate Courts, High Courts and Supreme Court - Procedure -Punishment for contempt of Court - Remedies against Punishment.

Contempt of Courts Act, 1971

An Act to define and limit the powers of certain courts in punishing contempt of courts and to regulate their procedure in relation thereto.

Legal history of Contempt of Courts

Prior to contempt of courts act 1926 the power of the court to punish for contempt was felt to be uncontrolled power which was no doubt remedied by the Act of 1926 and the amending Act 1937. Subsequently a committee was appointed to examine the law pertaining to contempt of courts and as a result the present act was enacted.

Types of Contempt

As per Section 2(9) contempt of courts means civil contempt and criminal contempt.

As per section 2(b) of the Act Civil Contempt means: Wilful disobedience of any judgement, decree, direction order writ or other processes of court or wilful breach of an undertaking given to a court.

Accordingly, section 2(c) of the Act criminal contempt means: The publication whether by words spoken or written or by signs or by visible representation or otherwise of any matter or the doing of any other act whatsoever which;

i) Scandalizes or trends to scandalize or lowers or tends to lower the authority of any court or prejudice or interfere or trends to interfere with the due course of any judicial proceeding or interferes or trends to' Interfere with or obstructs or trends to obstruct administration of justice in any other manner.

Proceedings under contempt of courts act are summary in nature.

Contempt of court is not an offence within the meaning of section 4(2) of Cr. P.C. Merits of the matter need not be gone into a contempt proceeding.

(V.G. Peterson **v** O.V Foreces) AIR 1963 SC 692. **Aim of Contempt Proceedings:**

The aim is to deter men from offering any indignities to a court of justice. Ramakrishna Reddy **v**. State of Madras AIR 1952 SC. 149.

Kinds of Contempt of Court

There are many kinds of contempt's, the main forms of contempt are

1) Insult to Judges

2) Attack upon judge proceedings

3) Comment on pending proceedings with tendency to prejudice fair trial obstruction to officers of courts, witnesses in the parties.

4) Abusing the process of the court.

5) Breach of duty by officers connected with the court and scandalizing the judges of the courts.

The following are certain examples of contempt with decided important case laws:

1. Stay of proceedings disobeyed:

When the superior courts order staying proceedings is disobeyed by the inferior court the later court commits contempt of court. Bardakanta Misra V. Bhimsel Dixit AIR 1972 SC 2466

2. Speeches or Writings misrepresenting Court proceedings:

Speeches or Writings misrepresenting the proceedings of the court or prejudicing the public or against a party or involving reflections on parties to a proceeding amount to contempt of Court. Judge commenting in press about pending case. Where a sessions Judge comments in press and television about the pending case it will amount to contempt of court. Subash Chand **v.** S.M. Agarwala 1984 Cr. L. J. 481 (Delhi).

3. Shouting at Court: By shouting at the court is belittling the dignities of the court which cannot ever be permitted as that would heard a dwindling of the faith of the public in affectioners of the system itself. It is unwholes one for any member of the bar to lose his temper and bring about a situation in the public court which can afford justifiable interference to be made of the action being voluntary and intended at lowering the prestige of judiciary. State of A. P. **v**. Saetharamaiah 1996 (2) ALT 992.

4. Advocate raising voice: An advocate raising voice in High pitch and annoying magistrate even after waning will amount to contempt of court. Mohamed Ali **v**. Prasanna AI R 1995 SC454

5. Forging order of court.

(i) Threatening writ petitioners

(ii) Police Officer obstructing execution of decree.

(iii) Jail superintendent not releasing the accused in spite of the order of the court.

(iv) Filing of false affidavit will amount to criminal contempt.

Afzal v. State of Haryana AIR 1996 Sc 2326.

Certain acts will not amount to contempt of court they are as follows **Under Section 7** a person shall not be guilty of contempt of court for publishing fair and accurate report of a judicial proceeding or any state thereof

Fair Criticism

It is open to anyone to express fair reasonable and legitimate criticism of any act or conduct of a judge in his judicial capacity even to make a proper and fair comment on any decision given by him.

Innocent publication and distribution of matter: Fair reporting regarding disposal of case and judgement of journalists. Rama Oayal Markaraha **v**. State of M.P. AIR 1978 SC 921

Punishment for Contempt of Court

Contempt of court may be punished with simple imprisonment for a term which may extent to 6 months or with time which may extend to Rs. 2000/- or with both. That the accused may be discharged or the punishment awarded may be remitted on apology being made to the satisfaction of the court.

Accountancy For Lawyers:

Accountancy for lawyers - Purpose of keeping accounts - Important aspects relating to accountancy - Legal requirements for maintaining books of accounts - Accounts of Professionals.

Accountancy is the science, art and practice of an accountant. it is a discipline which records, classifies, summarizes interprets financial information about the activities of a person or concern so that intelligent decisions can be made about the future actions.

FUNCTIONS OF ACCOUNTING:

1. systematic record of transactions
2. communicating results to the interested parties
3. compliance with legal requirements
4. ascertain the financial position of individual

ADVANTAGES OF ACCOUNTING:

1. replacement of memory
2. evidence in court
3. settlement of taxation liability
4. comparative study
5. assistance to various parties

LIMITATIONS OF ACCOUNTING:

1. records only monetary transactions
2. no realistic information
3. personal bias of accountant affects the accounting statements
4. no real test of managerial performance
5. it lacks a uniform procedure

NEED FOR ACCOUNTANCY FOR LAWYERS:

Lawyers have to maintain accounts and for this they should have the knowledge of accounting due to the following reasons:

1. as a member of the Bar Council, he should know its accounting.

2. he should know Legal services Authorities and Supreme Court Legal Services Committee.

3. he should know the accounting of Advocates as per Supreme Court rules.

4. he should know the welfare fund accounting.

5. he should know how to prepare his own accounts.

CASE LAWS:

1. Hikmat Ali Khan v. Ishwar Prasad Arya and Others (AIR 1997 SC 864)

The Supreme Court held that the conduct of Ishwar Prasad, an advocate was such that his name should be removed from the state roll of advocates as he was found guilty of an offence of attempting to commit murder and convicted for it and as he was unworthy of remaining in the profession.

2. Pawan Kumar Sharma v. Gurdial Singh (1998(7) SCC 24)

The court held that mere ownership of the taxi cannot lead to any irresistible conclusion that he was engaged in "taxi business" to constitute a misconduct.

3. Harish Chander Singh v. Suman Dondey (1999(2) SCC 215)

The court held that the disciplinary committee of bar council could not have held the advocate guilty of charge of misappropriation especially without going the whole of accounts.

4. Hamiraj L. Chulani v. Bar Council of Maharashtra & Goa (AIR 1996 SC 1708)

The Supreme Court held that the rule made by the bar council restricting the entry of a person already arraying on other profession is not arbitrary and at the same time it does not impose reasonable restrictions.